

**Senator Howard A. Stephenson** proposes to substitute the following bill:

**UNFAIR PUBLIC COMPETITION ACT**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Howard A. Stephenson**

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5 AN ACT RELATING TO STATE AFFAIRS IN GENERAL; SETTING FORTH THE INTENT  
6 OF THE LEGISLATURE WITH RESPECT TO PUBLIC-PRIVATE COMPETITION;  
7 PROHIBITING CERTAIN GOVERNMENT COMPETITION WITH PRIVATE ENTERPRISE;  
8 PROVIDING EXCEPTIONS; AUTHORIZING THE PRIVATIZATION POLICY BOARD TO  
9 MAKE PROPOSALS FOR ADDITIONAL PROHIBITIONS OF GOVERNMENT  
10 COMPETITION; AND PROVIDING FOR A PRIVATE RIGHT OF ACTION FOR  
11 INJUNCTIVE RELIEF.

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **63-55a-3**, as last amended by Chapter 18, Laws of Utah 1996

15 ENACTS:

16 **63-97-101**, Utah Code Annotated 1953

17 **63-97-102**, Utah Code Annotated 1953

18 **63-97-103**, Utah Code Annotated 1953

19 **63-97-104**, Utah Code Annotated 1953

20 *Be it enacted by the Legislature of the state of Utah:*

21 Section 1. Section **63-55a-3** is amended to read:

22 **63-55a-3. Privatization Policy Board -- Duties.**

23 (1) The board shall:

24 (a) review whether or not certain services performed by existing state agencies could be  
25 privatized to provide the same types and quality of services that would result in cost savings;

26 (b) review particular requests for privatization of services and issues concerning  
27 competition with the private sector and determine whether privatization would be feasible and  
28 would result in cost savings and ways to eliminate any unfair competition;

29 (c) recommend privatization to the agency head when the proposed privatization is  
30 demonstrated to provide a more cost efficient and effective manner of providing existing  
31 governmental services;

32 (d) comply with the provisions of Title 63, Chapter 46a, the Utah Administrative  
33 Rulemaking Act, in making rules establishing privatization standards, procedures, and  
34 requirements;

35 (e) maintain communication with and access information from, other entities promoting  
36 privatization;

37 (f) prepare an annual report that contains:

38 (i) information about the board's activities; and

39 (ii) recommendations on privatizing government services; and

40 (g) submit the annual report to the Legislature and the governor.

41 (2) In addition to filing copies of its recommendations for privatization with the relevant  
42 agency head, the board shall file copies of its recommendations for privatization with:

43 (a) the governor's office; and

44 (b) the Office of Legislative Fiscal Analyst for submission to the relevant Legislative  
45 Appropriation Subcommittee.

46 (3) (a) The board may study and make recommendations regarding proposed legislative  
47 amendments to Section 63-97-103, including additional commercial activities to be prohibited or  
48 general standards and exemptions relating to the prohibition of government competition with  
49 private enterprise.

50 (b) The board shall file copies of any recommendations made under Subsection (3)(a) with  
51 the governor's office and the Office of Legislative Research and General Counsel.

52 [~~3~~] (4) (a) The board may appoint advisory groups to conduct studies, research, analyses,  
53 and make reports and recommendations with respect to subjects or matters within the jurisdiction  
54 of the board.

55 (b) At least one member of the board shall serve on each advisory group.

56 [~~4~~] (5) This chapter does not preclude any agency from privatizing any service or

57 function independently of the board if:

58 (a) the contract is expending less than \$2,000,000 of the agency budget in a fiscal year;

59 (b) as part of the contract that privatizes the function, the contractor assumes all liability  
60 to perform the privatized function; and

61 (c) the agency notifies the board at least 120 days before the privatization occurs of their  
62 intent to privatize the function.

63 Section 2. Section **63-97-101** is enacted to read:

64 **CHAPTER 97. UNFAIR PUBLIC COMPETITION ACT**

65 **63-97-101. Title.**

66 This chapter is known as the "Unfair Public Competition Act."

67 Section 3. Section **63-97-102** is enacted to read:

68 **63-97-102. Definitions.**

69 As used in this chapter:

70 (1) "Commercial activity" means performing services or providing goods which can  
71 normally be obtained from private enterprise.

72 (2) "Government agency" or "agency" means a department, office, division, authority,  
73 commission, institution, board, or other agency of government, or any other governmental unit or  
74 political subdivision existing in the state or any other creation of the state or political subdivision  
75 of the state, regardless of whether funds are appropriated to such agency.

76 (3) "Institution of higher education" or "institution" means a college, university, or  
77 community college supported by the state.

78 (4) "Private enterprise" means an individual, firm, partnership, joint venture, corporation,  
79 association, or any other legal entity engaging in the manufacturing, processing, sale, offering for  
80 sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.

81 Section 4. Section **63-97-103** is enacted to read:

82 **63-97-103. General policy statement regarding public-private competition --**  
83 **Prohibition of certain government competition with private enterprise -- Exceptions.**

84 (1) It is the general policy of the state that a government agency or institution of higher  
85 education should not begin or maintain any commercial activity to provide goods or services for  
86 the use of other government agencies or institutions of higher education or for public use if such  
87 goods or services can be procured from private enterprise through ordinary business channels.

88 (2) A government agency or institution of higher education, except as provided in  
89 Subsection (3), shall not engage in the operation of a retail pharmacy other than for the internal use  
90 of that government agency or institution of higher education.

91 (3) (a) A government agency or institution of higher education is authorized to perform  
92 or provide a commercial activity listed in Subsection (2) if:

93 (i) the activity is specifically authorized by statute;

94 (ii) no private enterprise source is capable of providing the needed goods or services;

95 (iii) use of a private enterprise source would cause unacceptable delay or disruption of an  
96 essential program; or

97 (iv) the government agency or institution of higher education can provide or is providing  
98 goods or services to government agencies or institutions of higher education on a continuing basis  
99 at a lower total cost than if the goods or services were obtained from private enterprise.

100 (b) An institution of higher education is authorized to perform or provide a commercial  
101 activity listed in Subsection (2) when the commercial activity is a recognized and integral part of  
102 a teaching, educational, or research program leading to a degree or certificate that supports the  
103 mission of the institution.

104 (4) If a government agency or institution of higher education is authorized under the  
105 exception listed in Subsection (3)(a)(iv) to engage in an otherwise prohibited commercial activity,  
106 the government agency or institution of higher education shall set a fee or charge a price for that  
107 commercial activity which shall include the true and total cost related to engaging in the activity  
108 by the government agency or institution of higher education, including:

109 (a) the fair market value of the commercial activity; and

110 (b) the direct and indirect costs incurred in engaging in the commercial activity.

111 (5) Government agencies and institutions of higher education shall adopt and implement  
112 procedures to monitor their own compliance with this chapter.

113 (6) Any health sciences center or medical center of any institution of higher education and  
114 any of its departments, offices, divisions, or authorities are exempt from the provisions of this  
115 section.

116 Section 5. Section **63-97-104** is enacted to read:

117 **63-97-104. Private right of action.**

118 Any person who believes that a government agency or institution of higher education has

119 violated Subsection 63-97-103(2) may file an action for injunctive relief with an appropriate  
120 district court.